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No. 07-526

IN THE
Supreme Court of the United States

DONALD L. CARCIERI, Governor of Rhode Island, *et al.*,
Petitioners,

v.

DIRK KEMPTHORNE, Secretary of Interior, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF *AMICI CURIAE* STANDING ROCK SIOUX TRIBE AND NOTTAWASEPPI HURON BAND OF THE POTAWATOMI IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI [1]

Amici are federally recognized Tribes, which suffered devastating losses of land which continue to plague the Tribes today.

[1] The parties have consented to the filing of this brief. This brief was not authored, in whole or in part, by counsel for any party, and no party or other person (other than Amici) provided any monetary contribution to fund the preparation or submission of this brief.

The Standing Rock Sioux Tribe has a Reservation in North and South Dakota. *See* Act of March 2, 1889, 25 Stat. 888. Through various federal policies including allotment, about 900,000 acres of Reservation trust land have been lost. The resulting checkerboarded Reservation significantly impedes Tribal self-government and economic progress.

The Nottawaseppi Huron Band of the Potawatomi petitioned for federal recognition in 1934, but did not obtain federal recognition until 1995. *See Citizens Exposing Truth About Casinos v. Kempthorne*, 492 F.3d 460 (D.C. Cir. 2007). In 2002, the Secretary of the Interior, pursuant to 25 U.S.C. § 465, determined to take a parcel of about 78 acres into trust for the Tribe as an initial Reservation, an action upheld by the D.C. Circuit. *Id*.

Amici Tribes share an interest in the proper interpretation of 25 U.S.C. § 465 to enable them to restore a land base as needed to "assume a greater degree of self-government, both politically and economically." *Morton v. Mancari*, 417 U.S. 535, 542 (1974).

SUMMARY OF ARGUMENT

Section 5 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465, authorizes the Secretary of the Interior to acquire land for Indian tribes, as this Court has repeatedly made clear, most recently in *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 192, 220 (2005). In the instant case, petitioners argue that the phrase "for the purpose of providing land for Indians" in § 465 unambiguously limits the tribes for which the Secretary may acquire land to those whose members satisfy the definition of "Indian" under Section 19 of the IRA, 25 U.S.C. § 479, and more specifically, to Indian tribes that were

federally recognized on June 18, 1934, the day the IRA was enacted.

This disjointed construction is rejected by the plain language of § 465, which shows that "the purpose of providing land for Indians" is fulfilled by taking land in trust "for the Indian tribe or individual Indian for which the land is acquired." *Id*. Read in that context, it is clear that the former phrase uses the term "Indians" to refer to the Indian tribes and individual Indians for which the Secretary is authorized to acquire land by the latter. With respect to Indian tribes, that authority extends to all tribes within the broad definition set forth in section 19 of the Act, 25 U.S.C. § 479, under which "tribe" means "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." The Secretary's authority is not limited to tribes that were recognized on June 18, 1934, and indeed, that date does not appear in either § 465 or § 479. Petitioners' contrary contention relies entirely on the separate definition of "Indian" set forth in § 479. But however that definition is construed, it can not change the meaning of "tribe." Accordingly, this case does not turn on the meaning of the word "now" in the definition of "Indian" in § 479 – and this Court need not follow petitioners in their detour down that road.

In any event, the question presented here was definitively resolved in 1982, when Congress enacted the Indian Land Consolidation Act ("ILCA"), section 203 of which, 25 U.S.C. § 2202, expressly extended the application of § 465 to "all tribes," including those which had earlier rejected the application of the IRA at an election conducted by the Secretary of the Interior pursuant to Section 18 of the Act, 25 U.S.C. § 478. Congress declared that "[t]he provisions of

section 465 of this title shall apply to all tribes notwithstanding the provisions of section 478 of this title. . . ." 25 U.S.C. § 2202. This statute rejects the petitioners' attempt to separate Indian tribes that were recognized in 1934 from those that were recognized later.

ARGUMENT

I. SECTION 5 OF THE IRA AUTHORIZES THE SECRETARY TO ACQUIRE LAND IN TRUST FOR ALL INDIAN TRIBES.

Petitioners seek to overturn the Secretary's interpretation of § 465 by proffering a construction which they assert is clear and unambiguous. That argument fails, as the plain language of § 465 sustains the reasonableness of the Secretary's interpretation, which must be upheld even "if the language of the statute is open or ambiguous – that is, if Congress left a 'gap' for the agency to fill." *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, ____ U.S. _____, 127 S.Ct. 1534, 1540-41 (2007) (citing *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-843 (1984)).

A. The Plain Language of § 465 Authorizes the Secretary to Acquire Land for All Indian Tribes, and the Purpose of the Statute is Fulfilled by Such Acquisitions.

Petitioners contend that the statutory phrase "for the purpose of providing lands for Indians," and more specifically the word "Indians" in that phrase, limits the tribes[2] for which the Secretary may acquire land

[2] 25 U.S.C. § 479 defines "tribe" as follows:

under § 465 to those whose members are "Indian[s]" as defined by 25 U.S.C. § 479.[3] In their view, when the Secretary seeks to acquire land for a tribe under § 465, he must first test the tribe's members under § 479 to determine whether they are: (1) "persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction," *id*., or (2) "persons who are descendents of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation," *id*., or (3) "persons of one-half or more Indian blood." *Id*.[4] Petitioners contend that under the test for the first category, the Secretary is only authorized to acquire land for "recognized Indian tribe[s] now under federal jurisdiction," and that "now" means June 18, 1934, the day on which the IRA was enacted.[5]

Petitioners' tortured construction fails because it ignores the plain language of § 465, reads the phrase "for the purposes of providing land for Indians" out of

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> The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.

[3] 25 U.S.C. § 479 defines "Indian" as follows:

> The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood.

[4] This test would also apply to the second category. The third category is not at issue here.

[5] While the Court need not reach this issue, we agree with the Respondents that "now" refers to the time when the definition set forth in § 479 is applied.

its statutory context, and assumes that the word "Indians" in § 465 must mean "Indian" as defined by § 479. As settled rules of statutory construction instead direct, "[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (citing *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 477 (1992)). In fact, the same term may be interpreted differently in different provisions of the same statute. *Id.* at 341-344 (term "employees" has different meaning in different sections of Title VII); *Environmental Def. v. Duke Energy Corp.*, _____ U.S. ____, 127 S.Ct. 1423, 1432-34 (2007) (statutory definition of "modification" in the Clean Air Act may be interpreted differently in different regulations).

First, it is clear that § 465 authorizes the Secretary to acquire land for Indian tribes. As this Court very recently explained, by "authoriz[ing] the Secretary of the Interior to acquire land in trust for Indians" in § 465, "Congress has provided a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well being." *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 220 (2005) (citing *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 114-115 (1998)). *See also County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 255 (1992) (§ 465 provides for acquiring lands on behalf of the tribes); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 155-159 (1973) (§ 465 exempts permanent improvements on land leased by the Tribe from the Forest Service from state use tax).

Second, petitioners' argument that the word "Indians" in the phrase "for the purpose of providing land for Indians" must mean "Indian" as defined by § 479 is not correct. As this Court explained in *Environmental Def. v. Duke Energy Corp.*, ___ U.S. ___, 127 S.Ct. 1423, 1432 (2007), the "principles of statutory construction are not so rigid." Instead, "the natural presumption that identical words used in different parts of the same act are intended to have the same meaning . . . readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent." *Id*. (quoting *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932)).

The purpose of § 465 – "providing land for Indians" – is, by its plain language, fulfilled by taking such land "in trust for the Indian tribe or individual Indian for which the land is acquired." *Id*. (emphasis added).[6] Read in context, the word "Indians" in the phrase "for

[6] This is confirmed by the legislative history of the IRA. S. 3645, the bill that, as amended, became the IRA, initially authorized the acquisition of land only for Indian tribes. The authorization for the Secretary to acquire land for individual Indians was subsequently added by amendment. *See Chase v. McMasters*, 573 F.2d 1011, 1016 (8th Cir. 1978) (citing 78 Cong. Rec. 11126 (1934)). Prior to the amendment, Section 5 of S. 3645 would have authorized the Secretary to acquire land "for the purpose of providing land for Indians," only by taking title "in trust for the Indian tribe for which the land is acquired." 78 Cong. Rec. 11125-26. The amendment inserted the words "or individual Indians" after the word "tribe." *Id*. at 11126. This history reinforces the understanding that taking land into trust for tribes furthers the fundamental purpose of "providing land for Indians."

the purpose of providing land for Indians" refers to the Indian tribes and individual Indians "for which the land is acquired" to fulfill that purpose.[7] This reflects "the cardinal rule that statutory language must be read in context [since] a phrase gathers meaning from the words around it." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (quoting *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 596 (2004)). Petitioners' argument also wrongly construes the statute's purpose to limit the means chosen by Congress to achieve that purpose. Instead, acquisitions of land in trust that are specifically authorized by § 465 – including acquisitions for Indian tribes – define the manner in which Congress has chosen to implement its purpose.

If petitioners were correct, and the term "Indians" in the purpose phrase of § 465 meant only "Indians" as defined by § 479, the Secretary could then acquire land only for persons who satisfy the statutory definition of "Indian" – not for Indian tribes. This result is rejected by the plain language of § 465, and by this Court's construction of § 465 in *City of Sherrill*, 544 U.S. at 220, *Cass County*, 524 U.S. at 114-15, and *County of Yakima*, 502 U.S. at 255. Furthermore, if the Secretary were unable to acquire land for Indian tribes, the IRA would be powerless to reverse the loss of tribal land by which the allotment policy sought to achieve "the ultimate destruction of tribal government." *Montana v. United States*, 450 U.S. 544, 559 n.9 (1981). The IRA sought to change this course by "putt[ing] a halt to the loss of tribal lands through

[7] In much the same manner, the word "land" in the phrase "for the purpose of providing land for Indians" must be read to include "water rights," which § 465 also authorizes the Secretary to acquire.

allotment," *Mescalero Apache Tribe*, 411 U.S. at 151, "g[iving] the Secretary the power to create new reservations," *id*., authorizing land to be taken in trust for Indian tribes, *id*. at 155, and "establish[ing] machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically," *Morton v. Mancari*, 417 U.S. 535, 542 (1974). If the Secretary could only acquire land for "Indians" as defined by § 479, it would "effectively vitiate" the provisions of the IRA which implement the IRA's objectives, *see Robinson*, 519 U.S. at 345-346, which counsels forcefully against petitioners' position. *Id*.

Seeking to sidestep this problem, petitioners concede that the Secretary may acquire land for some Indian tribes under § 465, but then turn to the definition of "Indian" in § 479 in an effort to limit that group to the tribes that were recognized when the IRA was enacted. This effort fails because § 479 separately defines "tribe" without imposing any such limitation. *See Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 62-63 (2006) (selective inclusion of limiting language in different provisions of a statute is presumed to be intentional and purposeful) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). Thus, whether or not the definition of "Indian" in § 479 is limited in the manner petitioners urge,[8] that limitation has no application to the

[8] We note in this regard that the definition of "Indian" in § 479 does nothing more than to include the persons thereafter described within the meaning of the term "Indian" in the Act – it does not limit the term "Indian" to those persons. Indeed, immediately after describing those persons, § 479 adds that "[f]or the purposes of [the IRA], Eskimos and other aboriginal peoples of Alaska shall be considered 'Indians.'" As this Court made clear in *Fed. Land Bank of St. Paul v. Bismark Lumber*

meaning of the term "tribe" under § 479.[9] Under § 479, a "tribe" is "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation," *id*. Moreover, "any" is a word that "has an expansive meaning, that is 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster's Third New International Dictionary 97 (1976)). *See also Ali v. Fed. Bureau of Prisons*, ___ U.S. ___, 128 S.Ct. 831, 835-36 (2008); *Dep't of Housing and Urban Dev. v. Rucker*, 535 U.S. 125, 131 (2002). As defined by § 479, "tribe" plainly includes a tribe that was recognized after the IRA was enacted.[10]

Co., 314 U.S. 95 (1941), "the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle." *Id*. at 99-100 (citing *Phelps Dodge Corp. v. Nat'l Labor Relations Bd.*, 313 U.S. 177, 189 (1941)). *See also Chickasaw Nation v. United States*, 534 U.S. 84, 89 (2001) ("include" means to contain or comprise as part of a whole).

[9] The Solicitor General refers to an internal Memorandum of the Assistant Secretary of Indian Affairs dated October 1, 1980. Brief for the Respondents at 28 n.1. The Memorandum construed the Secretary's authority broadly – to permit taking land into trust for a tribe that was not recognized in 1934. *See United States v. State of Washington*, 520 F.2d 676, 692 (9th Cir. 1975). The reasoning of the Memorandum was internally inconsistent. On the one hand, it acknowledged that "the IRA often uses the term 'Indian' in contexts where it is clear that both tribes and individuals are being referred to," but on the other, it deprived that determination of any effect by proceeding to import the definition of "Indian" from § 479 into its analysis of the scope of § 465. *Id*. at 2 – 7. In any event, the Memorandum is merely an informal determination, and as the Solicitor General points out, the Memorandum failed to even consider the 25 C.F.R. Part 151 regulations which had been published in final form two weeks earlier. Brief for Respondents at 28 n.1.

[10] Likewise, the IRA's provisions to foster tribal self-govern-

Petitioners propose to avoid this result by construing the definition of "Indian" in § 479 to supersede the definition of "tribe" in § 479. Their proposal would effectively delete the words "any Indian tribe, organized band [or] pueblo" from that definition – reducing it to "the Indians residing on one reservation."[11] There is no justification for conflating these two separate definitions, but even if there were, petitioners' interpretation of the definition of "tribe" could not be reconciled with the "duty 'to give effect,

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ment have long been understood to apply to tribes that were recognized at the time of the IRA or thereafter. For example, a comprehensive opinion from the Solicitor of the Department of the Interior (Nathan Margold) issued just after the statute's enactment, discussed the contours of tribal governmental powers that were "vested in any Indian tribe or tribal council by existing law . . ." pursuant to the IRA, 25 U.S.C. § 476(e). As Solicitor Margold concluded, these tribal powers "apply to all Indian tribes recognized now or hereafter by the legislative or executive branch of the Federal Government." Powers of Indian Tribes, 55 Int. Dec. 14, 66-67 (1934). It would be highly anomalous for a tribe that was recognized after 1934 to have the full range of tribal powers under the IRA, but not be eligible to have land taken into trust under the same statute.

[11] The inclusion of "the Indians residing on one reservation" within the definition of "tribe" under § 479 actually rejects the petitioners' attempt to limit the tribes for which the Secretary may acquire land to those that were recognized on June 18, 1934. This is so because, as originally enacted section 16 of the IRA, 25 U.S.C. § 476, authorized "[a]ny Indian tribe or tribes, residing on the same reservation" to organize under its terms, adopt a constitution and bylaws, and exercise "all powers vested in any Indian tribe or tribal council by existing law" as well as certain powers enumerated in Section 476. *Id.* (In 1988, § 476 was amended and the words "or tribes, residing on the same reservation" were stricken. *See* Pub. L. 100-581, § 101.) Section 476 thus permitted the "Indians residing on one reservation" to organize as a tribe, which of course could not be done until after the IRA was enacted.

if possible, to every clause and word of a statute.'" *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (quoting *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 192 (1883)). Indeed, petitioners' construction of the term "Indian" would effectively eliminate the definition of "tribe" from the IRA.

B. The Statutory Scheme of the IRA Confirms That § 465 Authorizes the Secretary to Acquire Land for All Indian Tribes.

When the meaning of the term "Indians" in § 465 is considered in "the broader context of the [IRA] as a whole," *Robinson*, 519 U.S. at 341, it underscores that "Indians" is used there to refer to Indian tribes and individual Indians collectively. The IRA is itself entitled "An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes." 48 Stat. 984. In each instance (with the exception of the vocational education purpose) the term "Indians" is plainly intended to include Indian tribes, as it is in § 465. *See Bryan v. Itasca County*, 426 U.S. 373, 385 n.11 (1976) (title of Pub. L. 280, 67 Stat. 589 describing conferral of state jurisdiction over "civil causes of action" supports interpretation of § 4 of Pub. L. 280 as limited to civil causes of action).

Other provisions of the IRA also use the word "Indians" to refer to Indian tribes. Section 1 of the Act, 25 U.S.C. § 461, prohibits the allotment "of any Indian reservation, created or set apart by treaty or

agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, . . ." *Id*., 25 U.S.C. § 641 (emphasis added). Section 6 of the Act, 25 U.S.C. § 466, directs the Secretary to regulate "Indian forestry units," pursuant to which "the Secretary has promulgated a detailed set of regulations to govern the harvesting and sale of tribal timber," *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 146-47 (1980) (emphasis added), and to restrict "Indian range units," which the Secretary does pursuant to regulations that apply to tribal and individual Indian owned lands. *See* 25 C.F.R. § 166.1(a). Consistent with this usage, § 465 authorizes the Secretary to acquire lands "for the purpose of providing land for Indians," *id*. (emphasis added), while section 7 of the Act, 25 U.S.C. § 467, authorizes the Secretary "to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, . . ." *Id*. The Act also authorizes funds "to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations," 25 U.S.C. § 469 (emphasis added), which Section 17 of the Act, 25 U.S.C. § 477, makes clear refers to corporations which are chartered to Indian tribes. *Id*.

In contrast, when Congress intended to refer to individual Indians in the IRA, as originally enacted and as amended, it used that term – as does § 465 – or made its meaning clear by the context in which the term "Indian" is used. *See, e.g.*, 25 U.S.C. § 471 ("loans to Indians" for educational purposes); § 472 ("Indians who may be appointed" and "qualified Indians"); § 478 ("majority of the adult Indians"); § 480 ("Indians ineligible for loans"); § 482 ("individual Indians"); § 483 ("individual Indians").

Moreover, the use of the term "Indians" to refer collectively to Indian tribes and individual Indians in statutes that authorize Executive Branch officials to exercise Congressional power in Indian affairs is a common and longstanding practice. Most telling for present purposes is 25 U.S.C. § 194, which was first enacted by Congress in 1822. This statute established the burden of proof in "all trials about the right of property in which an Indian may be a party on one side. . . ." (emphasis added). In *Wilson v. Omaha Indian Tribe*, 442 U.S. 653 (1979), this Court specifically addressed an argument that the statutory reference to an "Indian" precluded a construction that included a "tribe." The case involved the ownership of lands affected by river movement. It was argued that 25 U.S.C. § 194 did not apply when a tribe (not an individual Indian) is party to the case. In rejecting that argument, this Court stated:

> It is clear enough that, when enacted, Congress intended the 1822 and 1834 provisions [now 25 U.S.C. § 194] to protect Indians from claims made by non-Indian squatters on their lands. To limit the force of these provisions to lands held by individual Indians would be to drain them of all significance, given the historical fact that at the time of the enactment virtually all Indian land was tribally held. Legislation dealing with Indian affairs "cannot be interpreted in isolation but must be read in light of the common notions of the day and the assumptions of those who drafted [it]." *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 206 (1978). Furthermore, "'statutes passed for the benefit of dependant Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians.'" *Bryan v. Itasca County*, 426 U.S.

> 373, 392 (1976), quoting *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89 (1918).

Id. at 665-66.

Similarly, in a measure dating back to 1832, Congress provided that "[t]he Commissioner of Indian Affairs shall . . . have the management of all Indian affairs and of all matters arising out of Indian relations." 25 U.S.C. § 2 (emphasis added). Although Congress did not use the word "tribe" in describing the Commissioner's charge, the Commissioner's duties of course extend to the management of relations with Indian tribes. *See, e.g.*, *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 691 (1979) (relying on § 2 to support regulations issued by the Interior Department to regulate Indian tribes' treaty fishing rights). In a like manner, the Secretary of the Interior is today "charged with the supervision of public business relating to . . . Indians," pursuant to 43 U.S.C. § 1457, which was originally codified as § 441 of the Revised Statutes. The Secretary's duties of course include responsibility for Indian tribes and individual Indians.

In 1834, Congress enacted a provision employing similar language to extend Indian preference in employment to "all cases of the appointments of interpreters or other persons employed for the benefit of the Indians." Act of June 30, 1834, § 9, 4 Stat. 737, 25 U.S.C. § 45. Likewise, in regulating trade on Indian reservations, Congress (which initially addressed this matter in 1790) referred variously to trading with "tribes" and with "the Indians," without clear distinction. Congress provided that the Commissioner of Indian Affairs "shall have the sole power and authority to appoint traders to the Indian tribes,"

25 U.S.C. § 261, and that any person "desiring to trade with the Indians on any Indian reservation," is required to do so under rules prescribed by the Commissioner. 25 U.S.C. § 262 (emphasis added). Nevertheless, the full regime regarding traders applies to trading with tribes, as well as with individual Indians, on the reservation. *See Cent. Machinery Co. v. Ariz. State Tax Comm'n*, 448 U.S. 160, 162-65 (1980) (Indian trader statutes pre-empt state taxation of on-reservation transaction with an Indian tribe).

Closest in time to the IRA is the Snyder Act, 42 Stat. 208, as amended 25 U.S.C. § 13, enacted in 1921 to authorize the Bureau of Indian Affairs, under the direction of the Secretary, to "expend such monies as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians . . ." As this Court explained in *Morton v. Ruiz*, 415 U.S. 199 (1974), "the Snyder Act provides the underlying congressional authority for most BIA activities," *id.* at 205-206,[12] which of course include activities con-

[12] As the Court noted in *Morton*:

> Prior to the Act, there was no such general authorization. As a result, appropriation requests made by the House Committee on Indian Affairs were frequently stricken on the House floor by point-of-order objections. *See* H.R.Rep. No. 275, 67th Cong., 1st Sess. (1921); S.Rep. No. 294, 67th Cong., 1st Sess. (1921); 61 Cong.Rec. 4659-4672 (1921). The Snyder Act was designed to remedy this situation. It is comprehensively worded for the apparent purpose of avoiding these point-of-order motions to strike. Since the passage of the Act, the BIA has presented its budget requests without further interruption of that kind, and Congress has enacted appropriation bills annually in response to the requests.

415 U.S. at 206.

cerning Indian tribes. Indeed, the Snyder Act provides the source of funding used to support contracts entered into by the federal government and Indian tribes under which the tribes provide federally-funded services. 25 U.S.C. § 450h(a). *See also* 25 U.S.C. § 13a (authorizing carryover of funds appropriated under the Snyder Act for use pursuant to self-determination contracts).[13]

As these examples indicate, in construing the breadth of the term "Indians," context matters. In a wide range of settings, Congress has used the term "Indians" to include Indian tribes. Congress enacted the IRA against the backdrop of these statutes, and consistent with their usage, employed the phrase "providing land for Indians" to describe those who benefit from the provision, which includes Indian tribes, whether recognized before or after the IRA was enacted.

C. The Indian Land Consolidation Act Confirms That § 465 Authorizes Land Acquisitions for All Tribes.

As this Court has recognized, "the meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more

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[13] The use by Congress of the term "Indians" in a manner that clearly includes tribes finds parallels in the language of this Court. *See*, *e.g.*, *Worcester v. Georgia*, 31 U.S. 515, 556-57 (1832) ("[f]rom the commencement of our government, congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations") (emphasis added); *Fed. Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 119 (1960) (stating in discussion of the Non-Intercourse Act, 25 U.S.C. § 177, that "[t]he obvious purpose of that statute is to prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties. . .") (emphasis added).

specifically to the topic at hand." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citing *United States v. Estate of Romani*, 523 U.S. 517, 530-531 (1998); *United States v. Fausto*, 484 U.S. 439, 453 (1988)). The Court applied this principle in *Bryan v. Itasca County*, 426 U.S. 373 (1976), in relying on § 406 of Title IV of the Civil Rights Act of 1968, 25 U.S.C. § 1326, to determine the scope of the civil jurisdiction conferred on the states in 1953 by § 4 of Pub. L. 280, 67 Stat. 589, 28 U.S.C. § 1360. *See Bryan*, 426 U.S. at 386-388.[14] The same principle applies here.

Congress enacted the Indian Land Consolidation Act ("ILCA") in 1982, and in so doing specifically addressed the reach of § 465, stating that

> The provisions of section 465 of this title shall apply to all tribes, notwithstanding the provisions of section 478 of this title: Provided, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s).

25 U.S.C. § 2202 (emphasis added). Thus, whatever question might have existed as to whether Section 5 applies to Indian tribes recognized after June 18, 1934, was resolved by the plain declaration set forth in 25 U.S.C. § 2202.

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[14] Section 406 had repealed § 7 of Pub. L. 280 and replaced it with a tribal consent requirement that applied to any further assumption of jurisdiction under Pub. L. 280. The Court found that § 406 supported the conclusion that the jurisdiction conferred by § 4 of Pub. L. 280 extends only to civil causes of action, because § 406 had described the jurisdiction conferred by Pub. L. 280 in those terms.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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